SUPREME COURT, U. S.

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No. [redacted] 47

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1962

JOHN J. ROBERTSON; E. A. SMITH; SHERMAN E. SMITH; MAX B. SCHRIER; EVERETT N. MITCHELL; CHARLES V. DARNALL; WALTER E. DARNALL; LEWIS WOODARD and MAY WOODARD, his wife; BEN J. FUNK and LORA B. FUNK, his wife,
Appellees,

vs.

MARGARET LEMMON; PAULINE JACK; WILLIAM F. JACK and LENA CLAIRE JACK, his wife,
Appellants.

BRIEF IN OPPOSITION TO MOTION TO DISMISS.

JAY W. SCOVEL,
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Attorneys for Appellants.

KANSAS LAW PUB. CO., TOPEKA

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1962

No. 658

JOHN J. ROBERTSON; E. A. SMITH; SHERMAN E. SMITH; MAX B. SCHRIER; EVERETT N. MITCHELL; CHARLES V. DARNALL; WALTER E. DARNALL; LEWIS WOODARD and MAY WOODARD, his wife; BEN J. FUNK and LORA B. FUNK, his wife,

Appellees,

vs.

MARGARET LEMMON; PAULINE JACK; WILLIAM F. JACK and LENA CLAIRE JACK, his wife,

Appellants.

BRIEF IN OPPOSITION TO MOTION TO DISMISS.

Appellees' motion to dismiss asserts three reasons for that action:

(1) That the appeal from the Supreme Court of the State of Kansas does not present a substantial Federal question.

(2) That the judgment of the Supreme Court of the State of Kansas rests upon an adequate non-Federal basis.

(3) That the questions on which the decision of the cause depends are so unsubstantial as not to need further argument.

ARGUMENT.

The first ground of appellees' motion to dismiss we believe does not contain any merit, as the federal question raised in this case is to determine whether or not the General Statutes of Kansas, 1949, Section 79-2804b, which provides in substance that every action to set aside a tax deed must be commenced within twelve months after the date of the sale of real estate, is in violation of the Fourteenth Amendment to the Constitution of the United States. It is the appellants' contention that under the facts in this case that this statute violates the Fourteenth Amendment to the Constitution of the United States in those cases where parties who own real estate are not made parties and no service is had upon them and wherein their real estate is sold for taxes.

Appellees contend that the judgment of the Supreme Court of Kansas rests upon an adequate non-Federal basis. We believe that any time the constitutionality of a law of the State is questioned, based upon the fact that it is contrary to the Fourteenth Amendment to the Constitution of the United States, that there is an adequate question raised to the Supreme Court of the United States. We believe the legal questions involved in this case are identical to those in the case of Walker v. City of Hutchinson, 352 U. S. 112.

Appellees for their third and last reason state that the questions on which the decision of the cause depends are so unsubstantial as not to need further argument. Appellants are at a loss to understand the meaning of this contention and believe it was put in purely as surplusage and, therefore, is not worthy of any further argument. The question raised in this case is whether or not the appellants were deprived of any property without due process of law and in violation of the Fourteenth Amendment to the Constitution of the United States, and we believe it makes no difference as to whether or not the amount involved is a substantial nature.

CONCLUSION.

It is respectfully submitted that the appellees' motion to dismiss should be denied, and that this Court should note probable jurisdiction of this appeal.

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